N THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19/10/2004

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THE HONOURABLE MR.JUSTICE P.D.DINAKARAN
AND
THE HONOURABLE MR.JUSTICE S.ASHOK KUMAR

T.C.No.853 OF 2004
AND T.C.Nos. 854 and 855 OF 2004

Commissioner of Income Tax .. Appellant
Tiruchirapalli.

-Vs-

M/s.S.N.Sons
Thiruthuraipoondi. .. Respondent

PRAYER: Against the order of the Income Tax Appellate Tribunal Madras 'A' Bench, dated 15.10.2003 in I.T.A.Nos.641 to 643/Mds/2003 respectively.

!For Appellant : Mr.K.Subramanian
Senior Standing Counsel
for Income Tax Cases

^For Respondent : ---

:JUDGMENT
(Judgment of this Court was delivered by P.D.DINAKARAN,J.)

These appeals are directed against the common order dated 15.10.2003 of the Income Tax Appellate Tribunal Madras 'A' Bench made in I.T.A.Nos.641 to 643/Mds/2003, with reference to the assessment years 1996-97, 1997-98 and 1998-99 respectively.

2.1. Brief facts leading to the filing of these appeals are as follows:

As per the books of accounts maintained by the respondent/assessee, the cost of construction of the cinema theatre was shown as Rs.36.61 Lakhs, and in support of the same the respondent/assessee had also obtained a report from a Registered Valuer, in which the valuation has been fixed at Rs.38.33 Lakhs. However, the Assessing Officer, referred the matter for valuation. As per the report of the Departmental Valuation Officer, the cost of construction works out to Rs.77.06 Lakhs.

2.2. Aggrieved by the orders of assessment, the respondent/assessee approached the Commissioner of Income Tax (Appeals), who by order dated 10.1.2003 granted certain modifications and finally estimated the cost of construction of the cinema theatre at Rs.63.81 Lakhs.

2.3. The respondent/assessee preferred further appeals before the Tribunal. The Tribunal, by a common order dated 15.10.2003 fixed the cost of construction at Rs.47 Lakhs and directed the assessing officer to modify the assessment orders accordingly.

2.4. Against the order dated 15.10.2003 of the Tribunal, the revenue had preferred these appeals on the following substantial question of law: "Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in estimating the cost of construction of the Theatre building constructed by the assessee during the period 1995 to 1998 at a round sum of Rs.47,00,000/- ignoring the relevant material pointed out in the orders of the Assessing Officer and the Commissioner of Income Tax (Appeals) like absence of proper accounts, vouchers, etc., and the prevailing rates of cost and the defects in the estimate made by the assessee's registered valuer and considering irrelevant material like the abstract of cost worked out at Rs.4 6.94 Lakhs by the assessee without any basis?"

3. The Calcutta High Court in Nataraj Cinema Vs. Commissioner of Income-tax, [2002] 257 ITR 415, held that the issue of cost of construction of the cinema theatre is basically a question of fact and no substantial question of law arises.

4. In the instant case, the Tribunal modified the addition on account of unexplained cost of construction on the basis of appreciation of evidence, which being purely a question of fact cannot be gone into in an appeal under Section 260A of the Income Tax Act.

5. Finding, therefore, no substantial question of law for our consideration, these appeals are dismissed. No costs. Consequently, T.C. M.P.Nos.596 and 597 of 2004 are also dismissed.

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